

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 75-1242

To be argued by  
SHEILA GINSBERG

B  
P/S  
70c

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

RAYMOND RICKMAN and  
RICHARD SMITH,

Appellants.

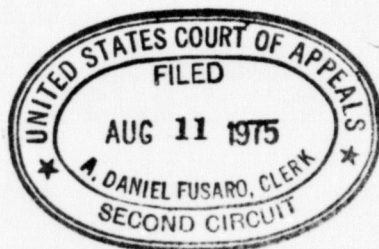
Docket No. 75-1242

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APPENDIX TO THE BRIEF  
FOR APPELLANT RAYMOND RICKMAN

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
RAYMOND RICKMAN  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

SHEILA GINSBERG,  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



75116

1951

TITLE OF CASE		ATTORNEY
THE UNITED STATES		ATZBERG
vs.		
RAYMOND RICKMAN, also known as "Chink"		
and RICHARD SMITH		
		For Defendant: Smith:
		Harold Borg
		123-60 83rd Avenue
		Kew Gardens, NY
Bank robbery and use of dangerous weapon		

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	
Fine,			6/27/18	John J. Apple (20.00)		
Clerk,				John J. Apple		
Marshal,						
Attorney,						
Commissioner's Court,						
Witnesses,						

DATE	PROCEEDINGS
3-26-75	Before PLATT, J - Indictment filed.
3/28/75	<sup>copy of</sup> Govt's notice that case will be called for pleading on 4/3/75 at A.M. filed
4-3-75	Notice of Readiness for trial filed
4-3-75	Notice of Appearance filed (deft Smith)
4-3-75	Before WEINSTEIN J - case called - defts & attys present - Legal Aid for deft Rickman and Harold Borg for deft Smith. Defts arraig and having been advised of their rights enter pleas of not guilty Pre Trial conference held and concluded - defts motion to suppress to be held the day of trial - Govts motion to dismiss 75 CR-6 is dismissed subject to being reinstated if 75 CR-239 is invalid- Bail contd and trial set for 4-24-75.

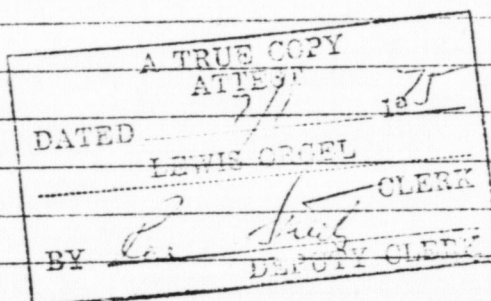
75CR 239

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
4/24/75	Before WEINSTEIN, J.- Case called- Trial adjd to 5/5/75 at 10:00 A.M. (RICKMAN)		
4-24-75	Notice of Motion filed, ret. May 5, 1975, for severance as to deft		
	RICKMAN		
4-29-75	Notice of Motion filed, ret. May 5, 1975, for suppressing evidence (Smith)		
5-1-75	Govts Trial Memorandum filed (received from Chambers)		
5/5/75	Before WEINSTEIN, J.- Case called- Defts and counsel present- Motion by deft Smith to suppress-hearing ordered and begun-hearing concluded- deft's motion to suppress denied-motion by deft Rickman for severance is denied Identification hearing ordered and begun-hearing concluded-deft's motion to suppress identification is denied-trial ordered and begun-jurors selected and sworn-Trial contd to 5/6/75 at 9:30 A.M.		
5-6-75	Before WEINSTEIN J - case called - defts & counsels present - trial resumed - trial contd to May 7, 1975 at 9:30 am		
5/7/75	Before WEINSTEIN, J.- Case called- Defts and counsel present-Trial resumed Govt rests-defts motion for mistrial denied- defts motion for judgment of acquittal filed-defts rest-All motions renewed and denied-court charges jury jury retires to deliberate-jury set home at 6:45 P.M.- Trial contd to 5/8/75 at 9:30 A.M.		
5-8-75	Before WEINSTEIN J - case called - defts & counsels present - trial resumed - Jury resumes deliberations at 9:30 am - Order of sustenance signed - Jury returns and renders a verdict of guilty as to counts 1 and 2 as to both defts - Jury discharged -Jury polled - trial concluded motion by defts individually to set aside the verdict is denied - defts remanded - bail revoked - sentences adjd without date - bail as to deft RICKMAN to be exonerated as soon as he report to State authorities - Bail exonerated as to deft SMITH - Notice of Appeal to be filed in forma pauperis for both defts. (at time of sentence)		
5-8-75	By WEINSTEIN J - Order of sustenance filed.		
5/9/75	Stenographers Transcript dated 5/8/75 filed		
5-12-75	Voucher for Expert Services filed.		
6-20-75	Notice of Letter motion for dismissal of counsel, etc. filed (deft SMITH Jr.) forwarded to Chambers.		
6-25-75	Petition for Writ of Habeas Corpus Ad Prosequendum filed (RICKMAN)		
6-25-75	By WEINSTEIN J - Writ Issued, ret. June 27, 1975.		
6-27-75	Before WEINSTEIN J - case called - defts present with attys - each deft is sentenced to imprisonment for 15 years pursuant to 18:4208(a)(2) on count 2 - count 1 is merged with count 2. Clerk to file Notice of		



75 CR-239  
CRIMINAL DOCKET

DATE	PROCEEDINGS
	appeal in forma pauperis on behalf of deft SMITH. Defts motion for reduction of sentence is denied - motion marked as court Ex.#1.
6-27-75	Judgment & Commitment filed for both defts - certified copies to Marshal.
6-27-75	Notice of Appeal filed(no fee) as to each deft -
6-27-75	Docket entries and duplicate of Notice mailed to the Court of Appeals.
7/1/75	Writ ret'd and filed executed (RICKMAN)
7-1-75	Record on Appeal certified and handed to J.Gil for delivery to the Court of Appeals



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
INCL. SEC. 5  
DISTRICT COURT, NY

MAR 25 1975

UNITED STATES OF AMERICA

TIME A.M. ....  
P.M. ....

SUPERSEDING  
INDICTMENT

- against -

RAYMOND RICKMAN, also known as "Chink",  
and RICHARD SMITH,

Cr. No. ....  
(T.18, U.S.C., §§2113(a) (d)  
and §2)

Defendants.

75 CR 239

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 23rd day of December, 1974, within the Eastern District of New York, the defendants RAYMOND RICKMAN, also known as "Chink", and RICHARD SMITH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 190-02 Jamaica Avenue, Queens, New York a sum of money in excess of One Hundred Dollars (\$100.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a) and 2).

COUNT TWO

On or about the 23rd day of December, 1974, within the Eastern District of New York, the defendants RAYMOND RICKMAN, also known as "Chink", and RICHARD SMITH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 190-02 Jamaica Avenue, Queens, New York, a sum of money in excess of One Hundred Dollars (\$100.00), in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation

and in commission of this act and offense the defendants  
RAYMOND RICKMAN, also known as "Chink", and RICHARD SMITH,  
did assault and place in jeopardy the lives of the said  
bank employees, as well as the lives of other persons present,  
by the use of a dangerous weapon. (Title 18, United States  
Code, Section 2113(d) and 2).

A. TRUE BILL.

Arthur G. Koon  
FOREMAN.

Donald H. Trosper / by Edward R. Koon  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



1  
2 THE COURT: Ladies and gentlemen, I am going  
3 to instruct you on the law. I want you to follow  
4 these instructions. It is your duty and obligation  
5 to decide the facts. You are the sole judges of  
6 the facts, and neither counsel nor I can do anything  
7 more to help you in that respect.

8 I personally have no view as to the guilt or  
9 innocence of the defendants. My sole purpose is to  
10 see that they are fairly tried in accordance with the  
11 law. Nothing that I have said, no ruling that I have  
12 made, should be used by you in inferring any view  
13 that I have about guilt or innocence, because I have  
14 none.

15 The fact that this prosecution is brought in the  
16 name of the United States does not entitle the  
17 United States to any greater consideration than any  
18 litigant would have.

19 All the parties, Government and the two  
20 defendants, are equal in this court. Nobody is  
21 entitled to any sympathy and nobody is entitled to  
22 any favor.

23 The indictment is an accusation in writing.  
24 It is not evidence of guilt. It is entitled to no  
25 weight in your judgment of the facts.

## Charge

Each of these defendants have pleaded not guilty.

The Government has the burden of proving guilty beyond a reasonable doubt with respect to each element of the crime a defendant is charged with committing.

This burden never shifts throughout the trial.

A defendant does not have to prove his innocence. The law never imposes upon a defendant in a criminal case, the burden or duty of calling any witnesses or producing any evidence.

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no inference of any kind may be drawn from the failure of a defendant to testify.

The defendant in a criminal case is presumed innocent and the Government must prove his guilt as to each and every element by proof beyond a reasonable doubt.

A reasonable doubt may arise not only from the evidence produced, but also from the failure of the Government to produce evidence with respect to any material issue.

A presumption of innocence remains with the

defendants throughout the trial and should be considered by you in your deliberations.

A reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his life.

Finding an individual to be guilty of committing a felony and subjecting him to the possibility of a criminal penalty is serious, and you will consider this fact in deciding whether or not you have a reasonable doubt.

Nevertheless, if you are convinced beyond a reasonable doubt that a defendant is guilty of a crime charged, then you should find him guilty of that crime.

It must be established beyond a reasonable doubt that a defendant acted wilfully and knowingly before he may be found guilty of a crime.

An act is done wilfully and knowingly if it is done intentionally, deliberately and voluntarily, with the specific intent to accomplish something the law forbids; that is to say, here, with a bad purpose of robbing a bank.

The state of mind of a defendant may be inferred from the circumstances as revealed in the



## Charge

case.

Each defendant here is charged with two counts of crime, and you must consider each count separately as to each defendant.

Count One reads as follows:

"On or about the 23rd day of December, 1974, within the Eastern District of New York, the defendant Raymond Rickman, also known as Chink, and Richard Smith, knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 190-02 Jamaica Avenue, Queens, New York, a sum of money in excess of \$100 in United States currency, which money was in the care, custody, control, management and possession of the said Chase Manhattan Bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation."

That is a charge of a violation of Section 2113(a) and Section 2 of Title 18 of United States Code.

Section 2113(a) reads as follows:

"Whoever, by force and violence, or by intimidation, takes from the person or presence of

1  
2  
3 another, any property or money or any other thing  
4 of value belonging to, or in the care, custody,  
5 control, management or possession of, any bank, is  
6 guilty of a crime."

7 In this case it is not contested that there  
8 was a bank robbery within the meaning of this Section.  
9 The issue for you to determine is whether the  
10 defendants whose case you are considering, in each  
11 case the particular defendant, was involved in this  
12 robbery either as a principal or as an aider and  
13 abettor.

14 The aider and abettor section of the statute  
15 reads as follows:

16 "Whoever commits an offense against the  
17 United States or aids, abets, counsels, commands,  
18 induces or procures its commission is punishable  
19 as a principal."

20 The Government must prove four elements with  
21 respect to Count One.

22 First, that the defendant, in each case, --  
23 when I say "defendants," I mean as to each individual  
24 defendant -- took the money.

25 You recall that there was testimony of  
Mr. Leader, the bank guard, and Mr. Butler, the



gentleman on the bus, regarding the description and identification of the robbers.

It is only necessary that the Government prove that more than \$100 was stolen.

Mr. Bannon, an investigator for the Chase Manhattan, testified that his audit revealed a shortage of approximately \$16,000.

Second, that such money was taken from the person or presence of others in the care, custody, control or possession of the bank.

It has been stipulated that this was an FDIC, Federal Deposit Insurance Corporation, insured bank within the meaning of the statute.

You have the pictures here with respect to people going over the counters, from which you can infer where the money was taken.

Third, that such money was taken by force, violence or intimidation.

With regard to this element, you will recall the testimony of Mr. Leader, the bank guard, as to the actions of the bank robbers with respect to himself and with respect to others, and you have the pictures before you.

Force or violence means physical force

unlawfully exercised.

Intimidation means putting in fear. The fear must be from the conduct of the accused or one who is working with him, such as objectively would cause a reasonable expectation of bodily harm.

Fourth, these acts must have been committed knowingly and wilfully. I have told you already what knowingly and wilfully means in the context of this case.

That is Count One, the first crime that is charged.

Count Two of the indictment is basically the same as Count One, except that Count Two charges that in the bank robbery, a dangerous weapon was used, thereby placing lives in jeopardy.

It reads as follows:

"On or about the 23rd day of December, 1974, within the Eastern District of New York, the defendant Raymond Rickman, also known as Chink, and Richard Smith, knowingly and wilfully, by force, violence and intimidation, did take from the person and presence of employees of the Chase Manhattan Bank, 190-02 Jamaica Avenue, Queens, New York, a sum of money in excess of \$100 in United States currency, which



1  
2 money was in the care, custody, control, management  
3 and possession of the said Chase Manhattan Bank,  
4 the deposits of which bank were then and there  
5 insured by the Federal Deposit Insurance Corporation,  
6 and in commission of this act and offense, the  
7 defendant, Raymond Rickman, also known as Chink, and  
8 Richard Smith, did assault and place in jeopardy  
9 the lives of the said bank employees, as well as  
10 the lives of other persons present, by the use of  
11 a dangerous weapon."

12 Section 2113 subdivision (d) makes it a  
13 crime to assault any person or put in jeopardy the  
14 life of any person by the use of a dangerous  
15 weapon or device while committing an offense such  
16 as the one described in Count One.

17 In order to find either defendant guilty of  
18 Count Two, you must find beyond a reasonable doubt  
19 that a loaded gun, capable of firing a bullet or  
20 shotgun pellets, was used, and that the defendants  
21 acted as a principal or aided and abetted in the  
22 bank robbery.

23 In this regard, you can consider the  
24 testimony of Mr. Leader and Mr. Butler and of the  
25 bus driver, that they heard a shot fired. In the

1  
2 case of Mr. Leader, that he saw the explosion from  
3 the gun.

4 It is not necessary that a defendant actually  
5 hold the gun or use it if one of the other people  
6 involved in the bank robbery that he was involved  
7 in, had such a gun as I have described.

8 A difficult aspect of your duty always is  
9 to determine the credibility of the witnesses before  
10 you and to weigh their testimony.

11 In weighing their testimony, you may consider  
12 the relationship of the witness to the Government;  
13 the witness' bias or interest in the outcome of the  
14 case; his manner while testifying; his candor and  
15 intelligence as you observed it; the extent to which  
16 he has been corroborated or contradicted by other  
17 credible evidence.

18 If you believe a witness has falsely sworn,  
19 you may disregard his testimony or you may believe  
20 part of it and disbelieve part of it.

21 You are not to give any greater weight or  
22 credibility to the testimony of a witness solely  
23 because of the fact that he is an agent of the  
24 Government. His testimony is to be evaluated in  
25 the same manner as you would evaluate the testimony



1  
2 of any other witness.

3 The evidence included the testimony of an  
4 expert witness. A witness who, by training and  
5 experience, has become well versed in a science or  
6 art, is permitted to give you his opinion on a matter  
7 on which he is versed, and the reasons for his  
8 opinion.

9 You should weigh and evaluate the testimony  
10 of an expert witness precisely as you would weigh  
11 the testimony of any non-expert witness.

12 Take into account the probability and  
13 reasonableness of the matters to which he has  
14 testified, the schooling and training he has and  
15 the want of it, and whether he has had that breadth  
16 of experience in the field which would lend weight  
17 to his opinions.

18 You should ask yourselves whether this witness  
19 by these standards, is qualified by training and  
20 experience to render valid and reliable opinions on  
21 the topic on which he testified.

22 His testimony should be given the weight  
23 which, on analysis, you conclude it is entitled to  
24 receive.

25 If you decide he was not qualified or that  
the basis of his opinion is inadequate, you may



1  
2 reject all or part of his testimony.

3       You may examine the physical evidence  
4 yourselves and utilize it in evaluating the  
5 expert testimony.

6       Evidence as to any oral admission claimed  
7 to have been made outside the court should always  
8 be considered with caution and weighed with care.  
9 The person making the alleged admissions may have  
10 been mistaken or may not have clearly expressed  
11 the meaning intended where the witness testifying  
12 to the admission may have been misunderstood or  
13 may have misquoted what was actually said.

14       However, when an oral admission made outside  
15 of court is proved by reliable evidence, such an  
16 admission may be treated as trustworthy and should  
17 be considered by you along with all the other  
18 evidence in the case.

19       The mere number of witnesses or documents  
20 and other evidence has no necessary relationship  
21 to the burden of proof.

22       Your recollection of the evidence governs.  
23 We have, however, transcribed a great deal of it,  
24 and if you wish any of it, the foreman will send in  
25 a note specifying what you want read, and we will

1  
2 try to find it for you.

3 Obviously, we would prefer to avoid reading  
4 back the whole trial, so try to be specific, if you  
5 can.

6 If you want any of the exhibits sent in, I  
7 will be pleased to send them in. I am not going to  
8 send in the gun, for obvious reasons, and I am not  
9 going to send in the money, for obvious reasons. If  
10 you want to look at it, you can examine it in the  
11 courtroom in front of me.

12 You should exchange views carefully with  
13 each other and listen carefully to each other  
14 respectfully.

15 While you should not hesitate to change your  
16 opinion if you are convinced that another opinion  
17 is correct, why, you should change yours, but if  
18 you are not convinced that somebody else's opinion  
19 is correct, you should maintain your opinion.

20 During these discussions, you are entitled to  
21 deliberate as long as you wish.

22 Any verdict you reach must be unanimous,  
23 bearing in mind your obligation to try each  
24 defendant and each count separately.

25 If you wish to come in with a verdict as to

1  
2 each defendant or as to each count as to each  
3 defendant separately, I will be happy to take it.

4 However, you can wait until you decide the  
5 whole case. Whichever you prefer.

6 Your oath sums up your duty, and that is  
7 without fear or favor to any man, you will well and  
8 truly try the issues before these parties according  
9 to the evidence given. That means, therefore, to  
10 sum up, that you must return a verdict of innocence  
11 or guilty for each defendant on each count.

12 So you have four decisions to make: two  
13 crimes are charged, two defendants.

14 Do you want to see me at the side bar,  
15 gentlemen?

16 MR. KATZBERG: For one moment, your Honor.

17 THE COURT: Is there any objection to my  
18 excusing the three alternates now?

19 MR. KATZBERG: No, your Honor.

20 MR. CHREIN: No.

21 MR. JAY: No.

22 THE COURT: The three alternates are excused.  
23 Take your things, please, and go downstairs. Do  
24 not discuss the case with each other or anybody  
25 else until the verdict is in.



Thanks for your help.

Good night.

(The three alternates excused.)

(Side bar follows:)

MR. KATZBERG: I'm sorry, but I neglected to tell the Court before, that the Court charge that there are other people who have been mentioned, like the getaway driver and the third man in the bank. They are not to consider those people at all in their deliberations. I believe that should be something covered by the charge.

(continued next page.)

PC  
take 5/2pm

Charge

541

(In open court:)

THE COURT: There are other people who are mentioned in the course of the trial. They have nothing to do with you. You are only trying these two defendants. You understand that?

(Side bar follows:)

MR. JAY: In the course of your reading reasonable doubt, you left out the last sentence. I would ask your Honor --

THE COURT: I did say it earlier. It was in Defendant Rickman's request number 4.

MR. JAY: I'm sorry, I did see it down there.

THE COURT: I did not read it again, because I just read it.

MR. CHREIN: I understood that, your Honor.

MR. JAY: That's fine.

MR. KATZBERG: Thank you.

MR. CHREIN: Your Honor, I don't know if this was covered in your charge. Perhaps it is my omission for not raising it earlier, but could the Court instruct them as you did before our summations, that arguments of counsel are not evidence and the only --

MR. KATZBERG: They've already been so instructed.



1  
2 THE COURT: I do not see any point. I have  
3 told it to them a half a dozen times.

4 (In open court:)

5 THE COURT: All right, swear the marshal,  
6 please.

7 (Male marshal duly sworn by the clerk of  
8 court.)

9 THE COURT: All right.

10 Ladies and gentlemen, retire and consider  
11 your verdict. The marshal will give you paper and  
12 pencil.  
13



CERTIFICATE OF SERVICE

Aug 11, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Eastern District of New York and to counsel for appellant Richard Smith.

Shirley G. Senter